Section 4854, Criminal Code of Alabama, defines murder in the first degree, so far as is material, as "every homicide perpetrated by poison, lying in wait or any other kind of wilful, deliberate, malicious, and premeditated killing." Every other homicide, committed under such circumstances as would have constituted murder at common law, is, by the same section, declared to be murder in the second degree. These are substantially the sections in force in a majority of states. The principal case is not argued, and but a single case, *Wilson* v. *State,* 128 Ala. 17, 29 S. 569, is cited in support of the majority opinion. In that case, an instruction that unless the defendant killed the deceased under a "formed design and with malice aforethought," he could not be convicted of either degree of murder, was held to be properly refused because the words "formed design" were misleading as applied to murder in the second degree. Nothing was said in the opinion as to the words "malice aforethought." On the other hand, it is argued that there can be no conviction for murder in the second degree under the statute except where there could have been a conviction for murder at common law Hence, as malice aforethought was an ingredient of murder at common law (21 Cyc. 703), it is an ingredient of murder in the second degree. *Fields* v. *State,* 52 Ala. 348; *Perry* v. *State,* 43 Ala. 21; *Ward* v. *State,* 96 Ala. 100. Under statutes similar to those of Alabama, it has been held that homicide committed with malice aforethought, but without deliberation, is murder in the second degree. 21 A. & E. Ency. L., p. 168; *State* v. *Curtis,* 70 Mo. 594; *People* v. *Foren,* 25 Cal. 361. See similar statements by way of *dicta* in *State* v. *Baker,* 13 Mont. 160, 32 P. 647; *Mitchell* v. *State,* 13 Tenn. (5 Yerg.) 339. See also *Babcock* v. *People,* 13 Colo. 515, 22 P. 817; *State* v. *Bradley,* 64 Vt. 466, 24 A. 1053; *Fahnestock* v. *State,* 23 Ind. 231; *Thomas* v. *State,* 45 Tex. Cr. R. 111; 74 S. W. 36; *Territory* v. *Scott,* 7 Mont. 407, 17 P. 627.

Damages—Action by Husband for Loss of Wife's Services.—Plaintiff's wife was struck and injured by defendant's automobile. During the wife's disability her mother-in-law came into the family and gratuitously took her place as housekeeper. Plaintiff sued to recover for the loss of his wife's society and services. *Held,* he could recover for the loss of conjugal fellowship and society, but it was error to admit evidence as to the prevailing rate of wages for servants since plaintiff "had neither incurred nor become liable for any sum for services of a housekeeper." *New York Transp. Co.* v. *Garside* (1907), — C. C. A., 2nd Cir. —, 157 Fed. Rep. 521.

The court is probably right in allowing the husband to recover for the loss of his wife's society, although such injury has been held to be too sentimental and intangible to permit a recovery. *Hawkins* v. *Front Street Cable Ry. Co.,* 3 Wash. 592, 28 Pac. 1021, 28 Am. St. Rep. 72, 16 L. R. A. 808. But the correctness of the court's refusal to allow a recovery for the loss of the wife's services is at least a doubtful question. Although no authorities are cited in this portion of the opinion and, indeed, no case directly in point seems to have been decided, yet a consideration of general principles and analogous cases may lead to a different conclusion. It is a general rule that "there can be no abatement of damages on the principle of partial com-

pensation received for the injury where it comes from a collateral source, wholly independent of the defendant." I. SUTH. ON DAM. (3rd Ed.) 406, and authorities cited. This rule has been applied where an insurance company paid the loss. *The Propellor Monticello* v. *Mollison,* 17 How. 152, 15 L. Ed. 68. And it has been held that, where a wife died as a result of the defendant's negligence and the husband married again, he could recover for the loss of the first wife's pecuniary services even though the second wife performed them. *Davis* v. *Guarnieri,* 45 Ohio St. 470, 15 N. E. 350, 4 Am. St. Rep. 548. Further, it has been said in a case similar to the principal case that the husband need prove no pecuniary loss in order to recover, *Kelly* v. *Township of Mayberry,* 154 Pa. St. 440, 26 Atl. 595, 32 W. N. C. 224. So the true rule in such cases would seem to be that the damages to the husband from the loss of the wife's services "follow uniformly and by legal necessity from the relation of husband and wife, which entitles him to her services and society and charges him with her support." *Hopkins* v. *The Atlantic and St. Lawrence R. R.,* 36 N. H. 9, 72 Am. Dec. 287. And the same reasoning would apply here as in those cases in which an injured person has been allowed to recover the expenses of nursing although such nursing was done gratuitously by members of his own family. See 6 MICH. LAW REV. 82, and cases cited.

DAMAGES—FAILURE TO DELIVER TELEGRAM—MENTAL SUFFERING—NEAR RELATIVE.—Plaintiff sued to recover damages for mental suffering caused by defendant's negligent delay in delivering to plaintiff the following telegram: " * * * Come to Cincinnati as soon as you get this, as mother is dead. Arthur Terry." Plaintiff was then engaged to be married to Mrs. Terry, the deceased. As a consequence of the delay, plaintiff was unable to attend the funeral of his fiancée. *Held,* since plaintiff was not a near relative of the deceased he could recover no damages for mental suffering. *Randall* v. *Western Union Telegraph Co.* (1908), — Ct. App. Ky. —, 107 S. W. Rep. 235.

Although this decision is probably sustained by the weight of authority, yet it is interesting as an illustration of the arbitrary manner in which the courts limit the recovery of damages for mental suffering. Thus, such damages have been allowed in cases similar to the principal case where deceased was plaintiff's (1) parent, *Mentzer* v. *W. U. Tel. Co.,* 93 Iowa 752, 62 N. W. 1, 57 Am. St. Rep. 294, 28 L. R. A. 72; *W. U. Tel. Co.* v. *Beringer,* 84 Tex. 38, 19 S. W. 336; (2) brother, *Wadsworth* v. *W. U. Tel. Co.,* 86 Tenn. (2 Pickle) 695, 8 S. W. 574, 6 Am. St. Rep. 864; (3) sister, *W. U. Tel. Co.* v. *Linn,* 23 S. W. (Tex. Civ. App.) 895; (4) wife, *Young* v. *W. U. Tel. Co.,* 107 N. C. 370, 11 S. E. 1044, 22 Am. St. Rep. 883, 9 L. R. A. 669. A recovery has been denied where deceased was plaintiff's (1) brother-in-law, *W. U. Tel. Co.* v. *McMillan,* 30 S. W. (Tex. Civ. App.) 298; (2) stepfather, *W. U. Tel. Co.* v. *Garrett,* 34 S. W. (Tex. Civ. App.) 649; (3) son-in-law, *W. U. Tel. Co.* v. *Gibson,* 39 S. W. (Tex. Civ. App.) 198; (4) niece, *W. U. Tel. Co.* v. *Wilson,* 97 Tex., 22, 75 S. W. 482. In the principal decision the court confesses that the mental suffering in such a case might be as great as in the case of near relatives, but nevertheless enforces this arbitrary limitation in order to prevent undue extension of the doctrine. The modern tendency seems to be to